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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,722	02/14/2002	Emanuel Shenkar	CCK-0071	2102
21302	7590	07/22/2004	EXAMINER	
KNOBLE, YOSHIDA & DUNLEAVY EIGHT PENN CENTER SUITE 1350, 1628 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19103			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/076,722

Applicant(s)

SHENKAR, EMANUEL

Examiner

James N Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7-19, 21-25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5, 7-19, 21-25 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 24 and 25 objected to because of the following informalities: the word, "compressed," should be changed to, "compress." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2-5, 7-8, 13-15, 18-19, 21-23 and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayes US 4,978,016.

Hayes '016 teaches a cap for a container, having a tamper evident ring comprising a main body portion (30) and lower portion (29), formed of retaining elements (44) and flexible web portions (42) comprising predetermined bisecting seam, which define openings (36), and wherein the lower portion is formed in a first molded position extending below and substantially aligned with the main body portion, before application on a container.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-12, 16-17 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes US 4,978,016.

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Hayes '016 teaches all claimed structural limitations of the instant invention, and would thus be inherently capable of being circumferentially compressible by 10 or even 20 percent, dependant upon the thickness of the flexible webs and tamper evident ring main body portion. One having ordinary skill in the art at the time the invention was made would have found it obvious to modify the thickness of the tamper evident ring main body portion and flexible web portions to provide a desired strength, or resiliency to the functioning parts of the invention.

6. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins US 6,116,442.

Hayes '016 does not teach retaining elements tapered in a circumferential direction to narrow at distal ends, and does not teach the flexible web elements being inversely tapered with respect to the retaining elements.

Higgins '442 teaches retaining elements (15) being tapered in a circumferential direction to narrow at distal ends, and web elements (21) being inversely proportional. The structure allows for the collapsing of the lower portion of the tamper evident ring to facilitate the application of the cap to a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tamper evident ring retaining elements and flexible web elements of Hayes '016, forming the retaining elements with a taper towards a distal end, and forming flexible web elements with an inverse taper, as taught by Higgins '442, motivated by the benefit of facilitating collapsing of the tamper evident ring during the application of the ring to a container.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hock et al. US 6,119,883.

Hayes '016 does not teach a "V-shaped" ventilation opening.

Hock '883 teaches a "V-shaped" ventilation opening in fig. 10, and further teaches it is a known variation of the rectangular shaped openings of Hayes '016.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tamper evident ring openings of Hayes '016, providing a "V-shaped" as taught by Hock '883, motivated by design choice.

8. Claims 2-5, 7-8, 11-19, 21-25 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky US 4,478,343 in view of Hayes US 4,978,016.

Ostrowsky '343 teaches a tamper evident ring (26) having a depending "J-hook" portion (38) with a first molded position extending below and substantially aligned with the upper portion (34), and having flexible web portions (42) defined by predetermined seams bisecting the element.

Ostrowsky '343 further discloses, in the embodiment of figs. 8-14, openings (56), which are intermittent flexible web portions (42) but does not teach ventilation openings defined by the flexible web portions.

Hayes '016 teaches a tamper indicating closure having a flexible web elements (42) that define openings (36). The tamper evident ring has a lower portion (29) extending below and substantially aligned with the upper portion (30). It is disclosed the openings "permit the hoop to deform radially in the regions between the hinges" (col. 4, lines 67-68).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tamper evident ring of Ostrowsky '343, providing the openings (36) defined by the flexible web elements (42) taught by Hayes '016, motivated by the benefit of assisting in the radial deformation of the ring during the installation of the cap on the bottle.

Regarding claims 11-12, 16-17, and 24-25, the combination of Ostrowsky '343 in view of Hayes '016 teaches all claimed structural limitations of the instant invention, and would thus be inherently capable of being circumferentially compressible by 10 or even 20 percent, dependant upon the thicknesses of the flexible webs and tamper evident ring main body portion. One having ordinary skill in the art at the time the invention was made would have found it obvious to modify the thicknesses of the tamper evident ring main body portion and flexible web portions to provide a desired strength, or resiliency to the functioning parts of the invention.

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9. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky US 4,478,343 in view of Hayes US 4,978,016 as applied to claim 22 above, and further in view of Higgins US 6,116,442.

Ostrowsky '343 does not teach retaining elements tapered in a circumferential direction to narrow at distal ends, and does not teach the flexible web elements being inversely tapered with respect to the retaining elements.

Higgins '442 teaches retaining elements (15) being tapered in a circumferential direction to narrow at distal ends, and web elements (21) being inversely proportional. The structure allows for the collapsing of the lower portion of the tamper evident ring to facilitate the application of the cap to a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tamper evident ring retaining elements and flexible web elements of Ostrowsky '343, forming the retaining elements with a taper towards a distal end, and forming flexible web elements with an inverse taper, as taught by Higgins '442, motivated by the benefit of facilitating collapsing of the tamper evident ring during the application of the ring to a container.

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky US 4,478,343 in view of Hayes US 4,978,016 as applied to claim 21 above, and further in view of Hock et al. US 6,119,883.

Ostrowsky '343 does not teach a "V-shaped" ventilation opening.

Hock '883 teaches a "V-shaped" ventilation opening in fig. 10, and further teaches it is a known variation of the rectangular shaped openings of Ostrowsky '343.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tamper evident ring openings of Ostrowsky '343, providing a "V-shaped" as taught by Hock '883, motivated by design choice.

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***Response to Arguments***

11. Applicant's arguments with respect to claims 2-26 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
7/21/04